(G.C.P.)J 455 (5,00,000)-11.2001) Spl-H.C.,A.S.,C.D.,78e

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.441 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions and Registrar's order.	Court's or Judge's orders

Shri K.S.Patil, Advocate for the petitioner.

Shri B.R.Patil, Addl.PP for the respondent No.1.

Shri Nitin Pradhan, Advocate for the respondent No.2.

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CORAM: R.M.S.KHANDEPARKAR, J

DATED: 15th APRIL, 2005.

P.C.

1. Heard the learned Additional Public Prosecutor for the respondent No.1 and the learned Advocate for the respondent No.2. Perused the records.

2. Rule. By consent, the rule is made returnable forthwith.

3. Though the petition was filed challenging the impugned order on various grounds, the learned Advocate for the

petitioner has restricted the challenge to the issue regarding necessity of the hearing of the complaint, viz. Criminal Case No.83 of 2000 along with the Criminal Case No.240 of 2000, which has been filed by the respondent No.2 under Section 138 of the Negotiable Instruments Act. It is the contention of the petitioner that the cheques in relation to which the grievance of missing thereof has been made were the lost cheques and have been illegally used to claim money from the petitioner and in that regard the petitioner has already filed the complaint being Case No.240 of 2000 against the respondent No.2. Since the defence in the Criminal Case No.83 of 2000 and the case of the petitioner in Criminal Case No.240 of 2000 being one and the same, it would be appropriate to direct the Court below to hear both the cases simultaneously so that no prejudice is caused to either of the parties. The learned Advocate appearing for the respondent No.2 has fairly conceded that the respondents will have no objection if the Court below hears both the complaints simultaneously.

4. Considering the fact that in both

the matters, the case putforth by the petitioner being one and the same and the evidence in both the cases on behalf of the petitioner being common, it would be appropriate, in the interest of justice, to direct the Court below i.e. Judicial Magistrate, First Class, Tasgaon, to hear and dispose of the Criminal Case No.83 of 2000 along with the Criminal Case No.240 of 2000. It is made clear that this Court has not expressed any opinion on merits of the case and various contentions sought to be raised by the petitioner in defence to the claim by the respondent No.2.

5. In the result, therefore, the petition is allowed on the limited point i.e. direction to the Judicial Magistrate, First Class, Tasgaon, to hear and dispose of the Criminal Case No.83 of 2000 along with Criminal Case No.240 of 2000 and to dispose of both the cases simultaneously. Rule is made absolute in above terms with no order as to costs.